

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF UTAH, IN AND FOR UTAH COUNTY.  
CASE NO. 2888.

P-7  
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Provo Reservoir Company,\*  
a corporation,\*

Plaintiff,\*

VS

Provo City, et al,\*  
Defendants.\*

\*\*\*\*\*

ANSWER

Counterclaim and Cross Complaint  
of

Smoot Investment Company,  
a corporation.

Now comes the said defendant Smoot Investment Company,  
a corporation, and by stipulation of counsel and by leave of  
court, first had and obtained, answers the complaint of the  
plaintiff herein, and admits, denies and alleges as follows:

1. This defendant admits the allegations in complaint  
of plaintiff contained in paragraphs Nos. 1 to 27, both in-  
clusive, and paragraph No. 37.

2. That this defendant has no knowledge, information  
or belief sufficient to enable it to answer any or either of  
the allegations in paragraph 28, 29, 29 (A), 29 (B), 29 (C),  
29 (D), 29 (E), 30, 31, 32, 33, 38 and 39 of plaintiff's com-  
plaint, and therefore it denies each and every allegation of  
the same.

Further answering the complaint of the plaintiff and  
by way of counterclaim <sup>against the plaintiff and cross-complaint</sup> against each and all of the defendants,  
this defendant alleges and shows to the court.

1. This defendant adopts and alleges as a part of its  
counterclaim against the plaintiff and as a cross complaint  
as to each and all of the other defendants herein, each and  
every allegations contained within paragraphs Nos. 1 to 26 both  
inclusive, of plaintiff's complaint herein, the same as if here  
set forth in full.

2. That this defendant is a corporation duly organized,  
created and existing under the laws of the State of Utah and by  
its charter and by full compliance with the laws of the State

of Utah, is authorized and empowered, among other things, to engage in the manufacture, selling and disposing of all kinds of finished lumber, building materials and supplies and to own, hold, lease and operate the necessary machinery and power plants necessary for furnishing of power therefor.

3. That in pursuance of its said powers and authority, it has acquired and is now the owner of the South Half of Block one(1), Plat A of Provo City Survey of Building Lots in Provo City, Utah County, State of Utah, and has constructed, installed and now maintains thereon a planing mill, fully equipped, at a cost of approximately Twenty Thousand (\$20,000.00) Dollars and is now engaged in the operation of said planing mill in the manufacture of all kinds of finished lumber, building material and builder's supplies and in selling and disposing of same to jobbers, wholesale and retail merchants and to the general public.

4. That in or about the year 1850 the predecessors in interest of this defendant, at great expense, constructed a canal from Provo River near the mouth of Provo Canyon in Utah County, State of Utah, to its said real property in Provo City, Utah, and then appropriated of the unappropriated waters of Provo River, seventy five (75) second feet by diverting the same into said canal and ever since its predecessors in interest and this defendant have used said water and the defendant now uses said water upon said real property in Provo City, for the purpose of developing hydraulic power for the manufacture of finished lumber, building material and supplies, for the furnishing of its trade as aforesaid, and that the use of said water is a necessary and beneficial use.

5. That in making said appropriation of the water of said river as aforesaid, this defendant and its predecessors in interest fully complied with all the requirements of the

laws of the State of Utah, relative to the appropriation of water and ever since said appropriation, have continuously used the same for the beneficial purposes aforesaid economically and without waste.

6. That the right to distribute, manage and control said water and to supervise said canal used as aforesaid for diverting the water of said river, has been for many years and is now with Provo City, a municipal corporation, one of the defendants herein, subject to the right, however, of this defendant, to the use of said water for the beneficial purposes aforesaid.

7. That the plaintiff and each of the other defendants herein as this defendant is informed and believes, and therefore alleges the fact to be assert and set up some claim or interest adverse to the ownership, right, title and interest of this defendant to the use of the said water of said river in canals aforesaid and as claimed by this defendant herein, but this defendant has not sufficient knowledge or information to enable it to set forth herein the character or nature of said claims or interest so asserted and set up or any of them.

8. This defendant further alleges that the several claims or interest asserted and set up by the plaintiff and each of the other defendants, are wrongful, without right and unfounded in fact or law, and are a cloud upon this defendant's title and right to the use, possession, ownership and enjoyment to the water of said Provo River as herein set forth.

Wherefore, this defendant prays judgment that the plaintiff and each of the other defendants herein, may be required to set forth any and every adverse claim, interest or demand by them and each of them in and to the water of said Provo River and the right to the use thereof so claimed by this

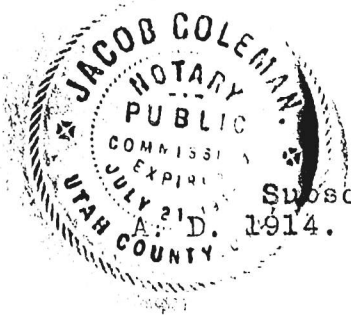
defendant to the fact that their several adverse claims, pretensions and demands may be adjudicated and declared null and void as against this defendant, and that the title, ownership and interest thereto of this defendant in and to the water of said river, so claimed by it as herein set forth, may be quieted and confirmed as against the plaintiff and each and all of the other defendants herein, and that the interest, title and ownership of this defendant thereto as herein set forth may be adjudicated and decreed to be good and valid.

This defendant prays for such other and further relief in the premises as to the court may seem just and equitable and for its costs in this behalf expended.

*Jacob Coleman and  
E. E. Cogman*  
Attys. for defendant, Smoot  
Investment Company, a corporation

State of Utah :  
County of Utah : SS.

O. P. Smoot, being first duly sworn on  
oath says: I am an officer of the Smoot Investment Company, a  
corporation, one of the defendants herein, to-wit: The  
Manager thereof, That I have read the above and fore-  
going answer, counterclaim and cross complaint and know the  
contents thereof, that the same are true of my own knowledge,  
except as to the matters therein stated on information and  
belief and as to those matters I believe them to be true.



O. P. Smoot

Subscribed and sworn to before me the 2<sup>nd</sup> day of Sept,  
1914.

Jacob Coleman  
Notary Public

My commission expires \_\_\_\_\_.

*See server admitted this 23<sup>rd</sup>  
day of October 1914.*

*Jacob Evans  
One of the Attys for  
Plaintiff*

1888

Counterclaim  
Smooot Invest-  
ment Company

IN DIST. COURT  
UTAH CO., UTAH,

\* FILED \*

OCT 26 1914

As Robinson Clerk.

As Dylane Deputy.